RECENT CASES

CARRIERS—CONTRIBUTORY NEGLIGENCE—QUESTION OF FACT—ALIGHTING FROM STREET CAR.—BURKES V. NORTHERN TEXAS TRACTION CO., 185 S. W. (TEX.) 428. The plaintiff while standing on the step of a street car waiting for it to stop was thrown therefrom by a sudden jolt. He sued to recover for the resulting personal injuries. *Held,* that the plaintiff's standing on the step did not constitute contributory negligence as a matter of law and the refusal of the trial court to submit to the jury the question whether the operatives of the car were negligent in causing it to jolt was error.

Contributory negligence has been defined as such negligence on the part of the plaintiff as helped to produce the injury complained of. *Akin v. Bradley Eng. & Co.,* 51 Wash. 658. A right of recovery for personal injuries is not defeated by the fact that the plaintiff's own act or conduct contributed to the injury unless such act or conduct was negligent. *City of Wyandotte v. White,* 13 Kan. 191. Contributory negligence is generally a question of fact for the jury, unless no recovery could be had upon any ivew, which could be properly taken of the facts. *Gentzkow v. Portland R. Co.,* 54 Or. 114; *Illingsworth v. Boston Electric Light Co.,* 161 Mass. 583. Experience would seem to justify the court, in arriving at the conclusion that standing on the step of a street car awaiting to alight is negligence only under particular circumstances which should be determined by a jury.

S. F. D.

CARRIERS—DELIVERY—NECESSITY OF NOTICE.—MATTHEWS ET AL. V. ST. LOUIS, I. N. & S. RY., 185 S. W. (ARK.) 461.—The owner of a cotton gin, located on a spur track, was accustomed to notify the conductor of a freight train when the car, placed there by him, was loaded, and to receive from him a receipt for contents of car. After loading, but before notice was given to the conductor, the car was burned. *Held,* company was not liable as a common carrier, until notice was given. McCullough and Kirby, J.J., *dissenting.*

In order for the liability of a common carrier to attach, there must be delivery for immediate transportation. *Gulf, Colorado & Santa Fe R. R. Co. v. S. T. Trawick,* 80 Tex. 270. It is not for immediate transportation if anything remains to be done by consignor before goods can be shipped, and in such case the liability of the company is that only of a warehouseman. *Dixon v. Central of Georgia Ry. Co.,* 110 Ga. 173. Where goods are delivered to a common carrier to await further orders from the shipper before shipment, the former is only liable as warehouseman, while they are so in his custody. *Edward J. O'Neill v. N. Y. Central & Hudson River R. R. Co.,* 60 N. Y. 138. The parties may agree as to what will constitute delivery for immediate transportation. *Ga. Southern & Florida Ry. Co. v. Marchman,* 121 Ga. 235. Express notice is not necessary, where

carrier has made it a custom to accept goods at a particular place without special notice of such deposit. *Merriam v. Hartford & New Haven R. R.*, 20 Conn. 354. In loading cars on side-track, delivery, which will attach the carrier's liability, takes place when car is loaded and notice given of such loading. *Kansas City, M. & O. Ry. Co. v. Cox*, 25 Okla. 774. The carrier is liable only as warehouseman, where car has been loaded, but notice has not been given. *Tate & Co. v. Yazoo & Miss. Valley R. R. Co.*, 78 Miss. 842. Notice does not seem to be the turning point in the case. *Ill. Central R. R. Co. v. J. L. Smyser & Co.*, 38 Ill. 354. The courts base their reasoning on the fact that the car belongs to the company and is under its control and in its possession, at least to the extent, that the company can move it anywhere on its tracks after it is loaded; whereas shipper has no such right. But wherever notice of any nature has been customary, no delivery sufficient to attach the liability of a common carrier, has been made until notice has been given.

J. N. M., Jr.

Contracts—Illegality—Sharing Official Salary.—Shinn v. Shinn, 88 S. E. (W. Va.) 610.—Two partners contracted that the salary of one elected sheriff of his county should be paid into the partnership funds and be divided equally—the sheriff to carry on the duties of his office, and the other partner to continue the firm business. *Held*, that such a contract was not illegal and was enforceable.

That the unearned salary of a public officer is not assignable on the ground that such an assignment is against public policy is law in England and the United States. *Arbuckle v. Cowan*, 3 B. & P. 321; *Field v. Chipley*, 79 Ky. 260; *Bliss v. Lawrence*, 58 N. Y. 442. But an agreement between two partners to share the salary of one, a public officer, has been held not to be an assignment of unearned salary, but to be an agreement as to the manner in which the salary should be disposed of when earned and paid. *McGregor v. McGregor*, 130 Mich. 505; *Thurston v. Fairman*, 9 Hun (N. Y.) 584. In *Anderson v. Branstrom*, 139 N. W. (Mich.) 40, a contrary decision is given on the ground that such an agreement is in substance and effect an assignment of unearned salary. This case could have been decided on the broad ground of public policy alone. The facts show an agreement by one candidate not to run for the office of prosecuting attorney and to withdraw in favor of his rival, in consideration of which they should divide equally the salary of the office. Such an agreement is plainly void. *Hunter v. Wolf*, 71 Pa. St. 282. The cases of *Gaston v. Drake*, 14 Nev. 175, and *Wisher v. Hammond*, 10 N. D. 72, which might seem opposed to the principal case, can be distinguished in that here the agreement came before the election to office of the one partner and so there was an incentive to the other to work for his election. *Santleben v. Froboese*, 43 S. W. (Tex.) 571, is, however, squarely against the principal case. The court says: "the idea that an officer elected by the people can put his office in as part of the assets of a partnership is utterly repugnant to public policy."

F. W. D.